LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
NOV 9 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 82

UNITED STATES OF AMERICA, EX REL. OTTO A. WILLUMEIT,

Petitioner,

vs.

EDWARD J. SHAUGHNESSY, ACTING DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

PETITIONER'S BRIEF

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EUGENE H. NICKERSON,
For The Legal Aid Society of New York,
Attorney for Petitioner.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement of facts	2
Disposition below	5
Specification of errors to be urged	6
POINT I—PETITIONER, CONVICTED AS A NATURALIZED CITIZEN AND NOT AN "ALIEN," IS NOT DEPORTABLE UNDER THE ACT OF MAY 10, 1920 PROVIDING FOR DEPORTATION of "ALIENS WHO MAY HEREAFTER (AFTER MAY 10, 1920) *BE* CONVICTED" FOR VARIOUS VIOLATIONS	6
POINT II—PETITIONER'S NATURALIZATION CERTIFICATE WAS COMPLETE EVIDENCE OF ITS VALIDITY UNTIL THE DENATURALIZATION, THE EFFECT OF WHICH WAS NOT RETROACTIVE	16

Table of Citations

Acheson v. *Murakami*, C. A. 9, August 26, 1949	13
Behrensmeyer v. *Kreitz*, 26 N. E. 704 (Ill. 1891)	18
Bridges v. *Wixon*, 326 U. S. 135 (1945)	12
Bugajewitz v. *Adams*, 228 U. S. 585, 591 (1913)	16
Caminetti v. *United States*, 242 U. S. 470 (1917)	14
Campbell v. *Gordon*, 6 Cranch 176	17
Delgadillo v. *Carmichael*, 332 U. S. 388	15
Fong Haw Tan v. *Phelan*, 333 U. S. 6, 10 (1948)	15
In re Fordiani, 120 Atl. 338 (Conn. 1923)	18
In re Gee Hop, 71 Fed. 274 (N.D. Cal. 1895)	18
Johannessen v. *United States*, 225 U. S. 227, 242, (1912)	16, 19
Johansen v. *Staten Island Shipbuilding Co.*, 272 N. Y. 140 (1936)	18
Klapprott v. *United States*, 335 U. S. 601 (1949)	13
Knauer v. *United States*, 328 U. S. 654 (1946)	13
Luria v. *United States*, 231 U. S. 9 (1913)	17

	Page
Mahler v. *Eby*, 264 U. S. 32, 39 (1924)	16
Matter of Wolton, 125 Misc. 564 (Sup. Ct. N. Y. Co. 1925)	18
Oehlert v. *Oehlert*, 124 N. E. 249 (Mass. 1919)	18
Pintsch Compressing Co. v. *Bergin*, 84 Fed. 140	17
Rosenberg v. *United States*, 60 F. 2d 475, 476 (3d Cir. 1932)	18
Sato v. *Hall*, 217 Pac. 520 (Cal. 1923)	18
Spratt v. *Spratt*, 4 Pet. 393, 408	17
Tutun v. *United States*, 270 U. S. 568, 577 (1926)	17
United States v. *Aakervik*, 180 Fed. 137 (D. C. Ore. 1910)	18
United States v. *Bitty*, 208 U. S. 393 (1908)	14
U. S. ex rel. Eichenlaub v. *Shaughnessy*, 167 F. 2d 659, 660 (1948)	19
United States v. *Gleason*, 78 Fed. 396 (C.C.E.D.N.Y. 1897)	18
United States v. *Parisi*, 24 F. Supp. 414, 420 (D.C. Md. 1938)	18
United States v. *Ragazzini*, 50 Fed. 923 (C.C.S.D.N.Y. 1892)	18
U. S. ex rel. Gregoire v. *Watkins*, 164 F. 2d 137 (2d Cir. 1947)	7
U. S. ex rel. Zeller v. *Watkins*, 167 F. 2d 279 (2d Cir. 1948)	7
Yamashita v. *Hinkle*, 20 U. S. 199 (1922)	18

Table of Statutes Cited

41 Stat. 593	2, 5, 6
U.S.C. Title 8, Sec. 137	12, 14
U.S.C. Title 8, Sec. 138	11, 14
U.S.C. Title 8, Sec. 155	11
U.S.C. Title 8, Sec. 156a	12, 14
U.S.C. Title 8, Sec. 173	17
U.S.C. Title 8, Sec. 213	5, 6
U.S.C. Title 8, Sec. 214	5, 7
U.S.C. Title 8, Sec. 738	9, 17
U.S.C. Title 8, Sec. 801	13
U.S.C. Title 8, Sec. 804	10
U.S.C. Title 28, Sec. 1254	2
U.S.C. Title 50, Sec. 21	5, 7, 10
U.S.C. Title 50, Sec. 34	2, 6

Table of Textbooks Cited

	Page
Wilson, International Law, p. 190	14

Miscellaneous

Sen. Rep. No. 283, 66th Cong., 1st Sess.	7, 8
H.R. Rep. No. 143, 66th Cong., 1st Sess.	7, 8
58 Cong. Rec. 3362-3374	8, 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 82

UNITED STATES OF AMERICA, EX REL. OTTO A. WILLUMEIT,

Petitioner,

vs.

EDWARD J. SHAUGHNESSY, ACTING DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Court of Appeals (R. 13) is reported in 171 F. 2d 773. The District Court rendered no opinion (R. 11-12).

Jurisdiction

The judgment of the Court of Appeals was entered January 3, 1949 (R. 16). The time for filing the petition for a

writ of certiorari was extended by order dated March 25, 1949 of Mr. Justice Jackson to and including May 28, 1949 (R. 17). Certiorari was applied for May 26, 1949, and was allowed on June 27, 1949 (R. 17). The jurisdiction of this Court is invoked under 28 U. S. C. §§ 1254, 2101.

Question Presented

The question presented is whether petitioner, convicted while a naturalized citizen of a violation of 50 U. S. C. § 34, is deportable after denaturalization under the Act of May 10, 1920 (41 Stat. 593), which provides for the deportation of "aliens" who may "hereafter [after May 10, 1920] be convicted" of such a violation, among others.

Statute Involved

The statute under which the Court of Appeals held petitioner deportable is the Act of May 10, 1920 (41 Stat. 593), which, as amended, provides in pertinent part:

> "• • • aliens of the following classes • • • shall • • • be • • • deported • • • if the Attorney General, after hearing, finds that such aliens are undesirable residents of the United States, to wit:
>
> • • • • • • •
>
> "(2) All aliens who since August 1, 1914, have been *or may hereafter be* convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts, the judgment on such conviction having become final, namely: • • • [50 U. S. C. § 34, among others]." (Italics supplied.)

Statement of Facts

This proceeding was commenced in the United States District Court for the Southern District of New York by an amended petition for writ of habeas corpus (R. 4-8). Pe-

titioner is held in the custody of respondent for removal and deportation from the United States (R. 4).[1]

Petitioner was born on November 28, 1905 in Sarrebourg, Lorraine (R. 6, 19), which was at the time petitioner was interned, and still is, a part of France. In 1925 petitioner came to the United States and was admitted as a quota immigrant for permanent residence (R. 19). In the same year he made a declaration of intention to become an American citizen (R. 4). In 1931 he was admitted to United States citizenship by judgment of the Superior Court, Lake County, Indiana (R. 4, 19, 25). In 1933 he was married in Chicago and thereafter became a physician (F. Hearings of Jan. 9, 1947, p. 32).

Until 1931 petitioner had been a German citizen, but at that time, upon acquiring United States citizenship, he lost his German citizenship pursuant to German law and the Treaty between the United States and Germany signed August 26, 1921 (R. 4-5; F. Ex. 14).

In 1942 petitioner testified in the United States District Court for the District of Connecticut against various members of the German-American Bund accused of conspiracy to violate 50 U. S. C. § 34 (R. 42-44). Petitioner pleaded guilty to the same indictment (R. 38-39; 42-43).

While the personality of petitioner is not strictly relevant to the question involved in this case, it may be of interest for the Court to read the recommendations of the District Attorney at the time petitioner was brought up for sentencing in the District Court for the District of Connecticut (R. 42-44). The District Attorney said, in part:

---

[1] Since petitioner is without funds the Clerk has printed part of the record and petitioner's brief. The Central Office File of the Immigration and Naturalization Service, all of which is on file as a part of the record, has not been printed in its entirety. References to the unprinted portion of the File are designated "F."

"Now your Honor, we come to the last of these defendants, Dr. Otto Willumeit. • • •

"We think he told the truth. • • • It has been our belief, after having gone into this thing pretty thoroughly with him, that he was more or less caught in it without perhaps intending to go as far as the others went. • • •

"I have a feeling, your Honor, that Dr. Willumeit can be restored to decent citizenship in this country. I think he has something that he can give to America.

• • • • • • •

"I would say that the Government would view a lenient sentence as a just sentence under all the circumstances. We think something can be done with this man. We do not think he is a bad man at heart, your Honor. We think he is probably a good man who got in with bad company and got in with this troube.

"I say to your Honor I am not his lawyer. I am supposed to be hard with him, I guess, if I believe in it. But in this case I do not feel that this man is a bad actor. I think there is a place for Dr. Willumeit in America in time, and he may become a most useful citizen.

"I would say that I really feel myself that this man is different. His participation was slight, and I don't say these things, as you know, unless I believe them. I would like to see him get a break; I think he deserves it. I think he has something in him and I think something can be done with him."

Despite this recommendation petitioner was sentenced to five years (R. 39). While petitioner was in jail an action was commenced to cancel his naturalization certificate on the ground that he had in 1931 procured the certificate by falsely representing allegiance to the United States (R. 36). A decree was entered June 9, 1944 canceling peti-

oner's certificate of naturalization and reciting that he ad "consented and agreed" to the cancellation (R. 33-7).[2]

Thereafter, by order dated June 22, 1945, the Attorney eneral interned petitioner as a dangerous alien enemy R. 40). On May 23, 1946 the Attorney General ordered ursuant to 50 U. S. C. § 21 that petitioner be removed from ie United States to Germany (R. 41).

Soon thereafter the Government commenced still further ction against petitioner. On October 4, 1946 he was rrested again while interned at Ellis Island (F. Ex. 1) nd proceedings were held to obtain an order of deportation f petitioner pursuant to the Immigration and Naturaliza-on laws (R. 20-22; 25-27). At the conclusion of the pro-eedings a warrant of deportation, dated May 16, 1947 R. 17-18), was issued directing that petitioner be de-orted, and reciting that petitioner was deportable under ie Act of May 10, 1920 (41 Stat. 593) on the ground that e was an undesirable alien, and under the Immigration ct of May 26, 1924 (8 U. S. C. §§ 213, 214) on the ground iat he entered [in 1941, after a three hour stop in Mexico] ithout a valid immigration visa [although he then held a alid unquestioned certificate of naturalization].

Thereafter, petitioner petitioned for habeas corpus (R. -8). The writ was dismissed on the face of the petition y District Judge Coxe without opportunity for hearing vidence on behalf of petitioner and without opinion (R. 0-12).

Disposition Below

The Court of Appeals, per Swan, J. (A. N. Hand and lark, JJ also sitting) affirmed (R. 13-16, 171 F. 2d 773).

---

[2] Petitioner does not concede that the decree canceling his certificate of turalization was properly entered, but the petition for *habeas corpus* w before the Court does not set forth a claim that petitioner is entitled release on that ground.

The sole ground on which the Court based its decision was that petitioner was deportable under the Act of May 10, 1940 (41 Stat. 593) providing that aliens who "since August 1, 1914 have been or *may hereafter be convicted*" of violation of 50 U. S. C. § 34, among other provisions, may be deported if found by the Attorney General to be "undesirable."

Specification of Errors to Be Urged

The Court of Appeals erred—

1. In holding that petitioner, convicted of a violation of 50 U. S. C. § 34 while a naturalized citizen, is, when later denaturalized, deportable under the Act of May 10, 1920, which provides for the deportation of "aliens" who may "hereafter [after May 10, 1920] be convicted" of such violations.

2. In affirming the dismissal of the writ of habeas corpus.

POINT I

Petitioner, Convicted as a Naturalized Citizen and Not an "Alien," Is Not Deportable under the Act of May 10, 1920, Providing for Deportation of "Aliens Who May Hereafter [After May 10, 1920] BE Convicted" for Various Violations.

The Court of Appeals affirmed upon the single ground that appellant is deportable under the Act of May 10, 1920. The Court below specifically refused to base its decision on other (and seemingly frivolous[3]) grounds advanced by the Government.

---

[3] The Government's contention that petitioner, upon his return from a three-hour sojourn in Mexico in 1941 should have produced an unexpired immigration visa required of "alien" immigrants under 8 U.S.C. § 213, is hardly worth noting, inasmuch as petitioner was then and had been for ten years a naturalized citizen, was not asked to produce an immigration

The Court of Appeals held petitioner deportable under the Act of May 10, 1920, *supra*, p. 2, which provides, in short, for the deportation of "All aliens who since August 1, 1914, have been *or may hereafter be* convicted" of certain violations. That Act was passed in 1920 and speaks as of that date. As appears from its wording, the Act was designed to permit the deportation of aliens who between 1914 and the date of the Act had committed specific crimes, and the deportation also of "aliens" who "may hereafter [after May 10, 1920] be convicted" of the same crimes. The language shows that the alien must be an "alien" at the time that he "may • • • be convicted." The use of the words "aliens who may *be*" convicted indicates that the alien must "*be*" an alien at the time of conviction. There is no other grammatical possibility.

The legislative history of the Act of May 10, 1920 indicates the immediate conditions which gave rise to its introduction and passage. While the Act permits the deportation of aliens convicted before and after its passage, the reports of both the Senate Committee (Sen. Rep. No. 283, 66th Cong., 1st Sess.) and the House Committee (H. R. Rep. No. 143, 66th Cong., 1st Sess.) show that the pressing desirability of passage of the Act was occasioned by the presence in the country in 1919 and 1920 of two groups of

---

visa, and could not be classed as an "alien" who was "not entitled" under 8 U.S.C. § 214 to enter the United States.

The contention that petitioner was a "native" of Germany and thus removable under 50 U.S.C. § 21, although born in Sarrebourg, Lorraine, a part of France at the time of his internment, was abandoned by the Government below in the light of the decisions in *U. S. ex rel. Gregoire v. Watkins*, 164 F. 2d 137 (2d Cir. 1947) and *U. S. ex rel. Zeller v. Watkins*, 167 F. 2d 279 (2d Cir. 1948). Those cases held that whether an alien is a "native" of a hostile nation depends upon whether his birthplace is within the boundaries of a nation hostile at the time of his arrest.

The further question of whether the cancellation of petitioner's naturalization caused him to become a citizen of Germany turns upon German law, as to which petitioner will introduce proof if the order is reversed and sent back for hearing.

aliens not deportable under any law then on the books. Those two groups were, first, some 500 persons who were interned by the President during the First World War as dangerous alien enemies, and, second, about 150 aliens who during that war had been convicted under various so-called war statutes.

It was stated in the letter of the Attorney General to the Chairman of the Senate Committee, as quoted in its report, "There is no law now on the statute books under which these persons can be excluded from the country, nor under which they can be detained in custody after the ratification of the treaty of peace. Unless H. R. 6750, or a bill similar in character, is passed, it will become necessary, on the ratification of the treaty of peace, to set free all of these dangerous individuals" (Sen. Rep. No. 283, 66th Cong., 1st Sess., p. 2; see also H. R. Rep. No. 143, 66th Cong., 1st Sess., pp. 2-3).

Representative Johnson, in charge of the bill in the House, stated: "The principal necessity is to provide for the deportation of about 500 interned alien enemies who are at Camp Oglethorpe, in Georgia, and Camp Logan, in Utah. Those 500 remain from about 4,000 alien enemies who were interned during the progress of the war" (58 Cong. Rec. 3362).

Representative Wilson, in support of the bill, stated that, "In addition [to the 500 alien enemies interned] * * * there are about 150 who have been convicted under what are known as the war acts as enumerated here, and there is no existing law by which they may be deported" (58 Cong. Rec. 3364).

It was never once suggested either in the Reports or in the Congressional Record that the bill was designed to accomplish the deportation of aliens convicted of various crimes at a time when they were naturalized citizens. It does not appear that Congress was informed that a single

one of the 150 convicted persons whom it was desired to deport had been convicted while a naturalized citizen.

While the specific question of whether Congress should deport aliens who had been convicted of various crimes while citizens and later lost their citizenship, does not appear to have been specifically raised at any time during the debate or in the Reports, there is ample evidence that responsible members of Congress had in mind only aliens who had been convicted of crimes while aliens. Thus, Representative Robsion, in support of the bill and in opposition to an amendment, spoke of "rich foreigners" who would be deported under the bill and stated: "They owed us more than the poor, ignorant foreigners. We permitted them to live here and granted them practically all of the rights of the American citizen. They rewarded our hospitality by joining with our enemies in an effort to destroy us. *As they were not citizens*, they were not required to take up arms in defense of the country in which they had grown rich." (58th Cong. Rec. 3374) (Italics supplied.)

Again, Representative Gard, in support of the bill, stated, "I assume that everybody will agree with that, that if *an alien is tried, is* afforded a fair trial and *is* convicted, then he *is* a proper subject for deportation." (58 Cong. Rec. 3371) (Italics supplied.)

The legislative history therefore confirms the only possible grammatical construction of the language of the Act, namely, that the alien must "be" an alien at the time he is convicted.

It must not be supposed that Congress in 1920 was unaware that naturalized citizens could lose their citizenship. Long prior to the time that the Act of May 10, 1920 was passed, there had been on the statute books the procedure now contained in 8 U. S. C. § 738, providing for judicial proceedings to cancel certificates of naturalization

procured by fraud or illegality. This procedure became law on June 29, 1906 (34 Stat. 601, 603).

Moreover, long before 1920 naturalized citizens might lose their citizenship, not only through revocation for fraud or illegality, but also in many ways not involving moral turpitude. For example, under what is now 8 U. S. C. § 801 a person might lose his United States nationality by obtaining naturalization in a foreign state, by taking an oath or making affirmation or other formal declaration of allegiance to a foreign state, by entering or serving in the armed forces of a foreign state unless expressly authorized by the laws of the United States, by accepting or performing the duties of any office under the government of a foreign state for which only nationals of such state are eligible, by voting in a political election in a foreign state to determine sovereignty, or by making a formal renunciation of nationality. And, for example, under what is now 8 U. S. C. § 804, passed in 1906, a naturalized citizen might lose his United States nationality, with certain exceptions, by residing for certain years in a foreign state.

Therefore, at the time that Congress was discussing and passing the Act of May 10, 1920, it was aware of the possibility that a naturalized citizen could lose his citizenship. But Congress did not in the Act of May 10, 1920 use language which suggests that such persons, convicted while citizens, could or should be deported under the Act. Congress used language which can only be construed to permit the deportation of aliens convicted after 1920 if they were aliens at the time of conviction.

Moreover, Congress knew how to provide in 50 U. S. C. § 21 for the removal of an enemy alien "not actually naturalized" and who thus might have previously been a naturalized citizen. Had Congress desired to authorize the deportation of persons convicted while "actually natu-

ralized," and later denaturalized, it could and would have expressly so provided in the Act of May 10, 1920.

It should be noted that the effect of a decision in this case that petitioner is deportable, though convicted while a citizen, would not be restricted to the Act of May 10, 1920. Similar language in many other provisions for deportation of aliens who have committed a variety of acts could consistently only be construed to permit the deportation of persons who committed such acts as citizens but subsequently lost their citizenship.

Thus 8 U. S. C. § 155 provides for the deportation of, for example (1) "any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute," or (2) "any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute," or (3) "any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose," or (4) "any alien convicted and imprisoned for a violation" of 8 U. S. C. § 138 which punishes "whoever shall, directly or indirectly, import, or attempt to import, into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation," or (5) "any alien who, at any time after entry, shall have on more than one

occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law," or (6) "any alien who, at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun." And 8 U. S. C. § 156a provided for the deportation of any "alien" who "after February 18, 1931, shall be convicted" for violation of any state or federal narcotic law.

Then again 8 U. S. C. § 137 provides that "Any alien who was at the time of entering the United States, or *has been at any time thereafter*, a member of any one of the classes of aliens enumerated in this section" shall be deported. (Italics supplied.) The section includes those "who are members of or affiliated with any organization" that "believes in, advises, advocates, or teaches" or prints, publishes and displays any matter advising the overthrow of the government or all forms of law by force or violence, the propriety of assaulting or killing an officer of organized government, the unlawful damage to property, or sabotage. The section further provides that the giving, loaning, or promising money or anything of value to be used for advising or teaching doctrine shall constitute advising or teaching that doctrine, and the giving, loaning or promising money or anything of value to an organization "shall constitute affiliation therewith." This Court had occasion to consider those provisions in *Bridges* v. *Wixon*, 326 U. S. 135 (1945).

The language of all these provisions for the deportation of aliens is not significantly different from the language of the Act of May 10, 1920. Thus if petitioner is deportable, though convicted while a naturalized citizen, many

once naturalized citizens, convicted while such, will logically be subject to deportation for a variety of offenses, whether they have lost their citizenship because of fraud or illegality or in other ways involving no moral blame.

There is no indication the Congress ever intended that all such persons should be deported. Indeed, there is nothing to show that Congress gave any consideration to the general problem. It can hardly be assumed that Congress, if it had done so, would have thought that all convictions for acts sufficient to require deportation if committed while an alien would all be so heinous as to justify deportation if committed by a citizen who thereafter loses his citizenship.

To say the least, the problem of the deportation of aliens for acts committed while naturalized citizens is one which requires comprehensive consideration by Congress of the nation's policy as to immigration, naturalization, loss of citizenship, and deportation. Many factors are relevant to such consideration. One question would be the manner in which citizenship is lost. For example, Congress might suppose that one who lost his citizenship under 8 U. S. C. § 801 for serving in the armed forces of a foreign state, or under 8 U. S. C. § 804 for having stayed too long in a foreign land, should not be placed in the same category as one whose citizenship is revoked because obtained illegally. Again, Congress might be of the opinion that persons like petitioner, whose citizenship was revoked on consent (R. 36), should not, in the light of war-time fervor surrounding many denaturalizations [*cf. Acheson* v. *Murakami*, C. A. 9, August 26, 1949 (denaturalization of citizens of Japanese ancestry imprisoned at Tule Lake Center set aside); *Klapprott* v. *United States*, 335 U. S. 601 (1949)], be treated in the same manner as one deprived of his citizenship after an active contest [*cf. Knauer* v. *United States*, 328 U. S. 654 (1946)]. Further, Congress might think, for

example, that one who was guilty of a technical illegality in obtaining his citizenship should not be classified in the same manner as one who committed a deliberate fraud going to the merits of his citizenship application.

Another relevant factor would be the type of act committed by the naturalized citizen. Congress might be of the opinion, for example, that, because of the opportunities for abuse, naturalized citizens who import others for "any • • • immoral purpose" [8 U. S. C. § 138] [*cf. Caminetti* v. *United States*, 242 U. S. 470 (1917); *United States* v. *Bitty*, 208 U. S. 393 (1908)] should be dealt with differently from a confirmed burglar. Or again, for example, Congress might think, with due regard for the interests embodied in the First Amendment, that a naturalized citizen who loaned money or something of value to a group which "believes in" the propriety of assaulting a government official [8 U. S. C. § 137] should not, if denaturalized, be placed in the same category as a rapist.

Another consideration would assuredly be the lapse of time between the commission of the crime and the denaturalization. Congress might suppose, for example, that a naturalized citizen convicted of a narcotics violation [8 U. S. C. § 156a] and who lost his citizenship some twenty years later, should not automatically be banished.

Further, Congress might reasonably think that a distinction between aliens convicted as such and those convicted as naturalized citizens should be made because the former alone would be entitled in the criminal trial to the protection of the consul of their foreign government [Wilson, *International Law*, p. 190], which may act through diplomatic or other channels.

It can thus be appreciated that there is scant basis for the assumption of the Court below that Congress intended to make no distinction between aliens convicted as such and aliens who had been convicted while naturalized citi-

zens because in either case the convicted person was equally undesirable (R. 15-16). For the reasons given, it cannot be thought that Congress desired to lump together all such persons, without giving consideration to any of the differences which are relevant to the problem. Congress, when it exercises its considered judgment in the matter, may well conclude that some persons convicted as naturalized citizens are more desirable residents than others convicted as aliens.

To summarize: Congress used language in the Act of May 10, 1920 which, grammatically construed, includes only aliens convicted while aliens and not persons convicted as naturalized citizens. The legislative history of the Act indicates that Congress was thinking only of aliens convicted as such. Although aware that citizenship could be lost in many ways, Congress did not use language, similar to that in other provisions, appropriate to deport persons who had committed acts as citizens. A decision against petitioner in this case would have ramifying significance throughout the entire law of aliens and deportation, a field in which the problems are intricate and delicate, involving basic liberties of person. There is no indication that Congress has given attention to the factors which are of significance in determining what aliens, if any, should be deported for acts committed as citizens. Congress is the body which can give consideration to the problem.

Even if there were doubt as to the meaning of the Act under which it is sought to deport petitioner, this Court has held that such doubt shall be resolved in favor of the alien. Equally relevant to this case are the Court's remarks in *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10 (1948):

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael*, 332 U. S. 388. It is the forfeiture for mis-

conduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

Finally, it should be noted that this Court has held that there is no constitutional obstacle to prohibit Congress from now passing laws to accomplish the deportation of aliens for acts which they have already committed. *Mahler* v. *Eby*, 264 U. S. 32, 39 (1924); *Bugajewitz* v. *Adams*, 228 U. S. 585, 591 (1913); *Johannessen* v. *United States*, 225 U. S. 227, 242 (1912). There need be no fear, therefore, that Congress is without power to pass legislation to deport whatever aliens are now within the borders whom it considers dangerous and undesirable. The significant point is that in the Act of May 10, 1920 Congress did not purpose the deportation of one convicted as a citizen.

Point II

Petitioner's Naturalization Certificate Was Complete Evidence of Its Validity Until the Denaturalization, the Effect of Which Was Not Retroactive.

The government argued below that petitioner was an "alien" when convicted in 1942 [although he then held an unquestioned certificate of naturalization and was not denaturalized until two years thereafter, because a) having allegedly obtained his naturalization certificate illegally, petitioner never really was a citizen, or b) the denaturalization somehow "retroactively" made him an alien as of 1942. There is no merit to these arguments.

a) *The naturalization decree was good until set aside*

It is fair to say that the government makes a most extraordinary argument in contending that petitioner, possessed in 1942 for over ten years of a valid, uncancelled, unquestioned certificate of naturalization, was nevertheless then an "alien." Fortunately for the naturalized citizens of the United States there is no warrant for such a monstrous doctrine.

Section 173 of Title 8 provides, in pertinent part, that "The word 'alien' wherever used in this chapter shall include any person not a native-born or naturalized citizen of the United States." Congress has prescribed in 8 U. S. C. § 738 the method by which a certificate of naturalization may be cancelled. Unless and until that judicial procedure has been pursued, a naturalized citizen is as much a citizen as any other and has all the rights of a native-born citizen, other than the right to hold the office of President.

Petitioner had held an unquestioned and uncancelled certificate of naturalization for ten years before he was convicted. He held that certificate at the time of his conviction. That certificate could be attacked only by the direct method provided by Congress. It could not be collaterally attacked. Until cancelled the naturalization certificate "is, against all the world, a judgment of citizenship." As stated by Brandeis, J. in *Tutun* v. *United States*, 270 U. S. 568, 577 (1926) "The judgment [granting a naturalization certificate] entered, like other judgments of a court of record, is accepted as complete evidence of its own validity unless set aside. *Campbell* v. *Gordon*, 6 Cranch 176; *Spratt* v. *Spratt*, 4 Pet. 393, 408. It may not be collaterally attacked. *Pintsch Compressing Co.* v. *Bergin*, 84 Fed. 140."

It has been uniformly held by every decision which has passed on the question that a naturalization decree, valid on its face and issued by a court having jurisdiction, may

not be collaterally attacked. See note 6 A. L. R. 405 ff. collecting cases of all varieties. See also *Behrensmeyer* v. *Kreitz*, 26 N .E. 704 (Ill. 1891) (certificate of naturalization presented by voter); *Johansen* v. *Staten Island Shipbuilding Co.*, 272 N. Y. 140 (1936) (whether a naturalized citizen's wife a citizen); *Oehlert* v. *Oehlert*, 124 N. E. 249 (Mass. 1919) (divorce action); *United States* v. *Ragazzini*, 50 Fed. 923 (C. C. S. D. N. Y. 1892) (indictment for selling naturalization certificate procured by fraud); *United States* v. *Parisi*, 24 F. Supp. 414, 420 (D. C. Md. 1938, per Chesnut, J.) (dictum); *Matter of Wolton*, 125 Misc. 564 (Sup. Ct. N. Y. Co. 1925, per Levy, J.) (same); *In re Fordiani*, 120 Atl. 338 (Conn. 1923) (same). Compare *Yamashita* v. *Hinkle*, 260 U. S. 199 (1922) (invalidity appearing on the face of the certificate); *In re Gee Hop*, 71 Fed. 274 (N. D. Cal. 1895) (same); *Sato* v. *Hall*, 217 Pac. 520 (Cal. 1923) (same); *Rosenberg* v. *United States*, 60 F. 2d 475, 476 (3d Cir. 1932, per Buffington, J.) (dictum, Court issuing decree of naturalization without territorial jurisdiction). Nor can the certificate of naturalization be collaterally attacked on the ground that it has been procured by fraud. *Behrensmeyer* v. *Kreitz*, *supra*; *United States* v. *Gleason*, 78 Fed. 396 (C. C. E. D. N. Y. 1897), *aff'd*, 90 Fed. 778 (2d Cir. 1898); *United States* v. *Aakervik*, 180 Fed. 137 (D. C. Ore. 1910); *United States* v. *Ragazzini*, *supra*.

b) *Petitioner's denaturalization in 1944 did not retroactively make him an alien in 1942*

The government also suggested below that somehow petitioner's denaturalization in 1944 retroactively made him an alien two years earlier when he was convicted in 1942. Indeed this argument appears to have been accepted by the court below in the companion to the instant case, *U. S. ex rel. Eichenlaub* v. *Shaughnessy*, No. 3, this term. The opinion

of the Court of Appeals in the *Eichenlaub case* (167 F. 2d 659-660) justified the deportation on the ground that "the decree of denaturalization relates back" in order to make the citizen an alien at the time of conviction.

There is no basis for this holding. Section 738 of 8 U. S. C., providing for judicial proceedings to cancel certificates of naturalization on the ground of fraud or illegality, did not make petitioner an "alien" at the time of his conviction in 1942. There is nothing in the language or history of the denaturalization section to show that it was intended to affect the meaning of the deportation acts, or retroactively to make naturalized citizens aliens and subject them to penalties for exercising the rights of citizens.

Moreover, soon after that section was originally passed in 1906, it was contended that, since the section permitted the cancellation of a naturalization certificate obtained prior to the passage of the section, the section retroactively imposed punishment upon naturalized citizens and was thus an *ex post facto* law. However, the Court held in *Johannessen* v. *United States*, 225 U. S. 227 (1912, per Pitney, J.), in answer to this argument, that the section did not impose punishment for acts committed prior to its passage, but simply took away the right to exercise for the future the privilege of citizenship after cancellation of the certificate of naturalization. The Court said:

> "The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges. • • • It imposes no new penalty upon the wrongdoer." (p. 242.)

To the same effect see *Luria* v. *United States*, 231 U. S. 9 (1913, per Van Devanter, J.).

This Court thus interpreted the section not to be retroactive but to be prospective only. The cancellation of peti-

tioner's certificate of naturalization in 1944 therefore did not somehow relate back to the time when petitioner was convicted in 1942. It merely placed him after denaturalization in the status of an alien. It did not purport retroactively to place him in a category of aliens who were deportable because of something they had previously done as aliens.

Conclusion

Petitioner is not subject to deportation under the Act of May 10, 1920. While Congress has the power to pass legislation now to deport aliens who have previously committed various acts, it has not done so. If Congress chooses to pass such legislation, it may readily do so.

The judgment should be reversed.

EUGENE H. NICKERSON,
For The Legal Aid Society of New York,
Attorney for Petitioner.